



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

October 28, 1994

Ms. Suzanne E. Giesecke  
Assistant General Counsel  
Texas Department of Agriculture  
P.O. Box 12847  
Austin, Texas 78711

OR94-711

Dear Ms. Giesecke:

The Texas Department of Agriculture (the "department") has asked whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The request was assigned ID# 26856.

The department received the following request:

This firm has been retained by Mancuso Farms in connection with the above-referenced incident. I would greatly appreciate your office forwarding to me a copy of the investigative report as soon as it has been prepared.

The department submitted to this office as responsive to that request a one-page document.<sup>1</sup> The department contends that this document is excepted from disclosure under section 552.103(a). To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

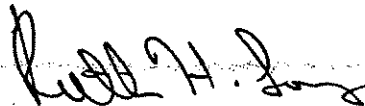
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<sup>1</sup>Since the department did not indicate that this one-page document is a representative sample from the investigative report, we assume that the document is the entire report.

In Open Records Decision No. 452 (1986) at 4, this office stated that litigation is not reasonably anticipated unless there is more than a "mere chance" of litigation ensuing. The department has the burden of providing "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." *Id.* However, the department has provided no information to this office that shows litigation is reasonably anticipated. The fact that an attorney is seeking an investigative report on behalf of his client is not sufficient to show that litigation is reasonably anticipated. Open Records Decision No. 361 (1983) at 2. Since the department has not met its burden of showing the applicability of section 552.103, the document at issue must be disclosed to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Government Section

RHS/rho

Ref.: ID# 26856

Enclosures: Submitted document

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(w/o enclosures)